



WASHINGTON FOREST LAW CENTER

615 Second Avenue, Suite 360
Seattle, WA 98104
www.wflc.org

Tel: 206.223.4088
Fax: 206.223.4280

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National FOIA Officer
U.S. Environmental Protection Agency
Records, FOIA and Privacy Branch
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Re: FREEDOM OF INFORMATION ACT REQUEST – Expedited Processing Requested

Dear FOIA Officer:

This is a request for documents pursuant to the Freedom of Information Act, 5 U.S.C. § 552 and 40 C.F.R. Part 2, made on behalf of Northwest Environmental Advocates (NWEA). NWEA is a non-profit, 501(c)(3), environmental organization that works through advocacy and education to protect and restore water and air quality, wetlands, and wildlife habitat. NWEA's mailing address is P.O. Box 12187, Portland, Oregon 97212-0187. NWEA does not intend to sell or otherwise make a profit from any documents disclosed in connection with this request, and does not intend to use disclosed information for commercial purposes.

As required by the FOIA, please provide copies of all documents and information that were generated or received by EPA on or after April 7, 2011, and that relate to the state of Oregon's Coastal Nonpoint Pollution Control Program that Oregon has been developing pursuant to the Coastal Zone Act Reauthorization Amendments of 1990, 16 U.S.C. § 1544b (CZARA). This request includes all documents and information in whatever form or location they have been recorded or retained, including but not limited to: correspondence sent or received; memoranda; informal and formal policy guidance; numerical data; telephone conversation notes; meeting attendance lists; meeting notes; maps; agreements; contracts; electronic mail and attachments; assessments; spreadsheets; analyses; reports; draft documents; recommendations; electronic data; and any other responsive documents.

EPA employees Dave Powers, Dan Opalski, Christine Psyk, and Alan Henning may have or know where to find documents responsive to this request. If you have documents that meet the terms of this request but believe they are not disclosable, please provide a list of such documents and an explanation of any such determination on your part. Also, please indicate if and where you have redacted any information from disclosed documents and/or if you do not have any of the information or documents requested.

Fee Waiver Request

Because NWEA is a non-profit, public interest organization, I hereby request a waiver of any fees associated with this request pursuant to 40 C.F.R. § 2.107(l). EPA has previously granted FOIA fee waivers to NWEA; I respectfully request that EPA do so again for this request. The FOIA requires agencies to waive fees associated with a request for information if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. *See* 5 U.S.C. §552(a)(4)(A)(iii). The fee waiver provisions of FOIA are to be liberally construed and applied. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987). As discussed in the proceeding paragraphs, a fee waiver is appropriate because disclosure of the requested information and documents is in the public interest: it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of NWEA.

First, this request seeks documents and information that directly concern identifiable operations and activities of the federal government. *See* 40 C.F.R. § 2.107(l)(2)(i). The requested documents relate to how the federal government implements CZARA and regulates nonpoint source pollution in coastal areas. For responsive documents or information developed outside of the government, responsive documents likely inform how EPA is carrying out its regulatory, enforcement, and other activities. Clearly the requested documents and information concern identifiable operations and activities of the federal government.

Second, disclosure of the requested documents and information will contribute to, and significantly further, public understanding by informing a reasonably broad audience of persons interested in the subject. *See* 40 C.F.R. § 2.107(l)(2)(iii) and (iv). So far as NWEA can tell, requested documents are not already in the public domain and so disclosure will necessarily lead to better understanding of EPA's regulatory activities. Indeed, since 1998, very little information has been made publicly available regarding EPA's view of the Coastal Nonpoint Pollution Control Program in Oregon. Consequently, absent disclosure of these records, the public is left largely to speculate about EPA's regulatory role and the resulting and/or potentially unregulated environmental impacts. Given the complexity of the legal issues and the scarcity of publicly available information, the public's understanding of government operations will be significantly greater after disclosure of the requested documents.

Indeed, NWEA has the ability and intention to disseminate disclosed documents and information to large segments of the public. NWEA is likely to communicate disclosed information to its members through websites, newsletters, and action alerts. NWEA communicates regularly with its members, who live and recreate throughout the Pacific Northwest. Additionally, NWEA maintains a website through which it regularly communicates information to interested citizens and the public (www.northwestenvironmentaladvocates.org). NWEA intends to review and publicize some of the disclosed information through its website—the regularly-updated home page, as well as the “document library,” “action alerts,” “programs,” and “getting involved,” elements.

NWEA has used numerous documents previously disclosed under an identically-worded FOIA request to EPA as the basis for letters in which NWEA has summarized for public consumption the views of the various agencies contained in those documents. *See, e.g.*, Letters to EPA and NOAA Re: Oregon Coastal Nonpoint Pollution Control Program: EPA and NOAA's Interim Approval of Agricultural Management Measures for Oregon (May 2, 2012) available at http://www.northwestenvironmentaladvocates.org/nweafiles/2012/12/CZARA%20ag_letter_%20201205.pdf; Oregon Coastal Nonpoint Pollution Control Program: EPA and NOAA's Interim Approval of Agricultural Management Measures for Oregon are Based on a Flawed Understanding of the State's Enforcement Authority (June 13, 2012) available at http://www.northwestenvironmentaladvocates.org/nweafiles/2012/12/CZARA_%20ag_letter_enforce_20120613.pdf; Oregon Coastal Nonpoint Pollution Control Program; EPA's and NOAA's Interim Findings on Pesticides (August 20, 2012) available at http://www.northwestenvironmentaladvocates.org/nweafiles/2012/12/CZARA_fed_letter_pesticide%20petition_20120820.pdf; Oregon Coastal Nonpoint Pollution Control Program; Protection of the Designated Use of Amphibians in Non-Fish-Bearing ("Type N") Streams Through the Midcoast Implementation Ready TMDL (October 5, 2012) available at http://www.northwestenvironmentaladvocates.org/nweafiles/2012/12/OR_MidCoast_TMDL_fed_letter_Amphibian_20121003.pdf; and Oregon Coastal Nonpoint Pollution Control Program; Additional Information Concerning Oregon's Failure to Regulate Agricultural Nonpoint Pollution (May 10, 2013) available at <http://northwestenvironmentaladvocates.org/nweafiles/2013/05/CZARA%20Letter%20to%20Federal%20Agencies%20re%20Agriculture%205%202013%20%282%29.pdf>. NWEA has brought information to the attention of elected officials, agency management and staff, and other public servants through dissemination of these letters.

Likewise, based on the documents previously disclosed by EPA in response to NWEA's FOIA request, NWEA petitioned the Oregon Environmental Quality Commission to adopt rules to address weaknesses in its coastal nonpoint program. *See* Petition to Initiate Rulemaking and Take Other Actions to Protect Existing and Designated Uses of Fish and Wildlife From Point and Nonpoint Sources of Pollution, available at http://www.northwestenvironmentaladvocates.org/nweafiles/Pesticide%20Petition%20FINAL_20120809.pdf. Moreover, by bringing weaknesses to the attention of EPA and NOAA that were revealed in the previously-released documents, NWEA was able to convince EPA and NOAA to change its position and include pesticides as an open issue in Oregon's program. *See* Letter from Dick Pedersen, Director, Oregon Department of Environmental Quality and Jim Rue, Director, Oregon Department of Land Conservation and Development to Dan Opalski, EPA, and Margaret Davidson, NOAA, July 1, 2013 available at <http://www.deq.state.or.us/wq/tmdls/docs/midcoast/CZARAsignedletter.pdf> (in which reference is made to a May 29, 2013 email from Christine Psyk, EPA, to Greg Aldrich, Oregon DEQ, noting that Oregon must "ensure the adequacy of stream buffers for the application of certain chemicals.")

NWEA also intends to publicize some of the disclosed information through public testimony and its work with state and federal agencies. NWEA regularly participates in public processes involving environmental issues and expects to use disclosed information to educate agency officials and others about the water quality and environmental impacts associated with the

coastal nonpoint pollution control plan in Oregon. NWEA also fully intends to communicate disclosed information to its friends in the non-profit community and doing so will enhance the level of public understanding about the relevant government operations. Indeed, NWEA is viewed as the primary source of information concerning the CZARA program in Oregon. Given that a November 15, 2013 date for a proposed approval or disapproval of Oregon's program is upcoming, members of the public will be looking to NWEA for advice on how to participate in the public comment period for this proposed action. Having the documents will assist NWEA in helping that portion of the general public that is concerned about nonpoint source pollution in the state's coastal watersheds – whether logging, farming, or pesticide spraying -- to participate in this process. For these reasons, disclosing the requested documents will significantly further public understanding of EPA's regulatory activities by helping inform a reasonably broad audience of interested persons.

Finally, disclosure is not primarily in the commercial interest of NWEA. *See* 40 C.F.R. § 2.107(l)(3). As a non-profit organization, NWEA has no commercial interest that could be furthered by disclosure. NWEA does not intend to sell the requested documents once obtained, nor does NWEA expect to disseminate the information in any way that would directly generate funds for NWEA. Instead, NWEA seeks the information to help educate the public and interested non-profit organizations. Even if NWEA had a commercial interest, disclosure is not primarily in that interest; rather, NWEA's primary interest in the requested documents is to allow it to better understand EPA's regulatory activities in controlling nonpoint source pollution in coastal areas in Oregon.

Accordingly, please waive all fees associated with the search, review, and production of documents and information responsive to this request. Should you decide a fee waiver is inappropriate for all responsive documents, please grant the waiver for each document meeting the regulatory criteria in 40 C.F.R. § 2.107. Additionally, if you deny the fee waiver in whole or in part, please contact me with an estimate of likely fees before incurring any charges. Finally, please let me know if it is possible to minimize or eliminate fees by reviewing documents before obtaining copies, by obtaining documents from the world wide web, or by having documents transferred to CDs instead of copied onto paper.

Expedited Processing Requested

I am also requesting expedited processing of this FOIA request. FOIA provides that each agency shall provide for expedited processing of records where there is a "compelling need." 5 U.S.C. § 552(a)(6)(E)(i). EPA's FOIA regulations state that requests "will be taken out of order and given expedited treatment whenever EPA determines that such requests or appeals involve a compelling need" such as "[a]n urgency to inform the public about an actual or alleged Federal government activity, if the information is requested by a person engaged in disseminating information to the public." 40 C.F.R. § 2.104(e)(1)(i); *see also* 5 U.S.C. § 552(a)(6)(E)(v) (statutory definition of "compelling need"). In this case, NWEA is engaged in disseminating information to the public and there is an urgent need to inform the public about the proposed CZARA decision that EPA and NOAA will issue on November 15 for public comment.

As noted above, EPA and NOAA are required by a settlement agreement in *Northwest Environmental Advocates v. Locke, et al.*, Civil No. 09-0017-PK, to issue a proposed decision approving or disapproving Oregon's Coastal Nonpoint Pollution Control Program ("CNPCP") by November 15, and to issue a final decision on Oregon's program by May 15, 2014. EPA and NOAA will be taking public comment on the proposed action and requestor NWEA intends to provide its views to EPA and NOAA on the proposed action as well as to urge the public, other organizations, and local governments similarly concerned about nonpoint source pollution in coastal watersheds of Oregon to comment. There is an urgent and compelling need for NWEA to have access to the requested records in time for it to read and evaluate the material in order to better understand the proposed action and to provide its views within the public comment period both to the federal agencies and to the public. As stated above, NWEA is seen as a key source of information by the public concerning the Oregon CNPCP. If EPA does not expedite the processing of this request and disclose these records before finalizing the proposed decision, it may prevent the public from fully participating in the proposed action and may prevent the requestor from effectively informing the public about the proposed action. In accordance with 5 U.S.C. § 552(a)(6)(E)(vi) and 40 C.F.R. § 2.104(e)(3), attached hereto is a certified statement of an employee of NWEA whose professional activity includes information dissemination.

Conclusion

Please contact me if you have any questions about this request, particularly about the scope or identity of the documents requested. You can reach me at the letterhead address or by telephone at (206) 223-4088 extension 4. Finally, although I will manage communications concerning this request, please send all materials that are responsive to this request to Ms. Nina Bell, Executive Director, Northwest Environmental Advocates, P.O. Box 12187, Portland, Oregon 97212-0187.

Thank you for your assistance with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Paul Kampmeier', with a stylized flourish at the end.

Paul Kampmeier
Attorney at Law